

**STATE OF MONTANA
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
PROJECT STAFF REPORT
August 30, 2006**

Proposal: Britell's Point of Pines (A) Drainfield and, (B) Access project.

Proponents: Various landowners within Lots 1-27 of Britell's Point of Pines and Lots 1 and 2 of Cashin-Pastor subdivisions along the east shore of Whitefish Lake.

PART I – REQUEST SUMMARY

Project Description:

- (A) Drainfield - Eight of eleven landowners owning 12 of 19 "project area" lots within the original Britell's Point of Pines subdivision (includes Lot 2, Cashin-Pastor subd.) have expressed an interest in use of Trust Lands as a leased drainfield area to serve their adjacent private owned lands on the south side of East Lakeshore Drive. In addition to the land encumbered by underground septic pipes from residences to the site, another 1.6 acres of land would be encumbered by the drainfield based on the current design. The consultant has completed an initial suitability analysis on the site. In addition, a site plan for conceptual treatment/drainfield system has been designed and percolation tests have occurred on the site; results are favorable. Approval is not anticipated to be an issue if the proposal goes before the Flathead County Health Department and Montana Department of Environmental Quality.
- (B) Access - Owners of Lots 20-27 have expressed an interest in purchasing remnants of Trust land between their Lots and East Lakeshore Drive to resolve an outstanding access issue. The request indicated that Lot 19 could benefit from the proposal also but contact has not been made to determine whether that landowner would be interested in participating. A preliminary survey has determined that the proposed sale parcel would be "1.6 acres or so...".

Project Location:

- (A) Drainfield: The proponents have hired a Registered Sanitarian who has identified an area suitable for use as a drainfield in the SE ¼, SE ¼, Section 32, T32N, R22W, and is located within the Swift Creek Subarea of the WNP.
- (B) Access: The area proposed for purchase is the Trust Lands located on the "lake" side of East Lakeshore Drive in the SW ¼, SW ¼, Section 33, T32N, R22W, and is located within the Swift Creek Subarea as defined in the WNP.

Note: The project areas as proposed do not overlap.

Trust Beneficiary: MSU

Background Information:

Whitefish Area Trust Land Planning Activities

There are 13,000 acres of State Trust Lands near Whitefish that are managed by the MT Department of Natural Resources and Conservation (DNRC). The DNRC came to Whitefish in May of 2003 to prepare a Neighborhood Plan for these Trust Lands. Local citizens petitioned the State Board of Land Commissioners (Land Board) to charter a committee comprised of Whitefish citizens working in collaboration with the DNRC to develop the Neighborhood Plan in order to represent the needs and values of the community. The Whitefish School Trust Lands Advisory committee was established and completed their work in October 2004.

PART II – RECOMMENDATION

Transaction Options

The options generally available for Trust Land transactions are separated into two categories:

1. Disposal: Sale/Land Bank; Land Exchange; Permanent Easement
2. Authorization: Lease; License

The transactions/process DNRC is considering are:

1. Simultaneously address the septic and access issues:

Resolve the access and sanitation issues on private lands in a holistic fashion (possible land exchange or boundary adjustment to advantage the Trust and disposal area to accommodate the private use issues).
2. Separately address the septic and access issues:
 - a. Drain Field – The letter of interest was submitted by Jere Johnson, a Registered Sanitarian on behalf of eight landowners and suggests a “leased drainfield easement area”. Departmental authority to grant an easement appears to be limited to existing systems that encroach onto trust lands as a corrective measure. A lease is an option that has been successfully used. Other possible options to meet this need could include disposal through land exchange or sale, or forming an association and designing the drainfield with reserve area available to other area landowners including the WNP identified Trust Land homesites.
 - b. Access – The letter of interest as submitted by Steven Cummings on behalf of the owners of Lots 20-27 of Britell’s Point of Pines states an interest in purchasing the subject lands. This appears to be a viable option. Simply correcting the access issue is relatively easy through either a lease, or a permanent easement. The latter options do not meet the stated ownership objective of the adjacent landowners, nor do these options consider the suggestion that this is the best opportunity for this parcel to produce Trust revenue.

Coordination Opportunities And Needs

Public scoping will include focused effort to identify opportunities to coordinate activities that are complimentary or conflicting. Some of the known activities that will be considered within the context of this proposal are:

- Whether the proposed location is advantageous to the future use of the area Trust Lands.
- Potential for combining the need for 1.6 acres of trust lands for use as a drainfield area with the existence of 1.6 acres of Trust lands on the “lake” side of the road needed to resolve access issues.
- Broaden the scope to determine if there are other landowners with drainfield needs that could benefit by expanding this drainfield project.
- Forest Management activities
- Potential for the proposals to achieve WNP goals (land exchange, conservation)
- Impact to the “6 potential homesites” identified for the Swift Creek Subarea of the WNP
- Other income potential of the lands
- “Trail Runs Through It” proposal
- Other goals, policies etc...

Recommendation

The proposals meet the intent of the WNP and the physical characteristics of the proposed location appear to be compatible. **Staff recommends continuing with the Process Determination Phase of the WNP project review process.** The following actions would be advantageous to DNRC:

Facilitate a Public meeting to provide information, hear comments and consider coordination opportunities and needs. Publish a Scoping Notice and make available the Letter of Interest and Staff Report for local governments, the public, transaction partners, and key local legislators. Input received from this Scoping process will be used by DNRC to determine:

- *Specific Transaction options and sequencing.*
- *A public involvement plan.*
- *Options for working with a Community Transaction Partner(s).*
- *Options for working with a local government entity.*
- *If an RFP should be issued to consider other proposal options that may also exist for the parcel being evaluated.*
- *The appropriate applications needed to complete the transactions and initial level of MEPA.*

Dependant upon the resultant course of action, the project could be presented to the Board of Land Commissioners as a staff recommendation prior to entering into an implementation agreement with the proponent.

PART III – AGENCY REVIEW

The Real Estate Management Plan (REMP), the State Forest Land Management Plan (SFLMP), and the Whitefish Neighborhood Plan (WNP) make up the framework within which management decisions are made regarding these lands. Discussion regarding each of these plans' applicability to the proposal is offered below:

Real Estate Management Plan

The REMP is the guiding management philosophy of the DNRC Real Estate Management Bureau and embodies three general goals: (1) sharing in expected community growth; (2) planning proactively; and (3) increasing revenue for Trust beneficiaries. It is recognized that public input and local community involvement will be critical for the success of the REMP. The proposal is considered here in context with the REMP "Funnel Filter" process:

Relationship To The First 5 Filters Of The Funnel Process From The REMP: The following filters are intended to be applied in consideration of development projects. Though neither of the proposals would result in increased residential, commercial or industrial development, a brief filter description is offered at each filter level. The access project does not propose any change in land use and is reviewed here for coordination opportunities. If the drainfield project review resulted in modifications that consider development of Trust Lands per the WNP, appropriate review would occur at that time.

➤ **PHYSICAL ENVIRONMENT FILTER**

The Physical Environment filter identifies lands unsuitable for development due to steep slopes, floodplain, or presence of valuable habitat for Grizzly Bears and/or Bull Trout

➤ **TRANSITIONAL FILTER**

The Transitional Filter identifies lands with favorable development attributes through proximity relationships of Trust Lands with established uses and existing roads and infrastructure.

➤ **MARKET/DEMOGRAPHIC FILTER**

The Market/Demographic Filter attempts to define the Trust Land's "share" of development within a given market by pacing it with projected growth in that market given the Trust Land share of land.

➤ **PHYSICAL-SUITABILITY FILTER**

The Physical Suitability Filter guides site evaluations for the purpose of identifying specific parcels of land that might be suitable for development opportunities.

➤ **REGULATORY FILTER**

Applicable documents include:

- *State Forest Land Management Plan*
- *Whitefish Neighborhood Plan (local growth policy)*
- *Habitat Conservation Plan*
- *Local land use regulations*

Given the nature of the proposed use, there are no known conflicts with the existing, applicable regulatory (and non-regulatory) land use documents. Special consideration would have to be given to the State Forest Land Management Plan to minimize and/or compensate for impacts to forest management.

State Forest Land Management Plan

Because the lands on which the proposal is being considered are classified timber lands, the impacts to the management of these lands for timber production will be considered, i.e.:

- Shifting of management objectives;
- Removal of acreage from timber production;
- Any other impacts identified during scoping and review.

The WNP recognizes the SFLMP current timberland classification and addresses them within the context of a more detailed community discussion. Forest management supervisors will be involved at all stages of discussion, and review of this proposal to insure consistency with the goals of the SFLMP.

Whitefish Neighborhood Plan

The WNP is consistent with, and reflective of the REMP goals and addresses them within the context of a more detailed community discussion. Following is the list of applicable goals from the WNP followed by Policy specifically addressing the proposals:

- Generate long-term and full-market economic return from the use of trust lands for Montana's public schools and other beneficiaries.
- Maintain the high water quality in the Whitefish Lake watershed, the primary source of drinking water for Whitefish.

B. SWIFT CREEK SUBAREA

1. Current Situation and Planning Issues

(Pertinent part) Some of these lakeshore owners have failing septic-disposal systems and would like to acquire access to a portion of trust lands for septic leach fields.

3. Neighborhood Plan Concept and Implementation Strategy for the Swift Creek Subarea

(Pertinent part) In addition to the above revenue-generating measures, DNRC could lease certain lands to adjacent landowners to use for a community leach field to address septic-tank failures along the lake. This should be done in a manner that aids in the protection of other trust lands and ensures that there is no devaluation of adjacent trust lands, the public's right to use the lands, or other opportunities to generate revenue.

(Prepared by: Northwest Land Office SRL)

G:CO4117/Real Estate Mgmt/Whitefish Area Plan/Brittels/BrittelsStaffReport